

REMARKS/ARGUMENTS

This application has been reconsidered carefully in light of the Office Action dated as mailed on 17 May 2004. A careful reconsideration of the application by the Examiner in light of the foregoing amendments and the following remarks is respectfully requested.

This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the outstanding Office Action.

This response is also accompanied with a check and/or authorization to charge deposit account for any additional claim fee due as a result of this Amendment because the number of independent claims exceeds the number of independent claims for which fees have previously been paid, the total number of claims exceeds the total number of claims for which fees have previously been paid, or both.

Amendment to the Specification

By the above, the specification has been amended in the manner suggested by the Examiner.

Amendments to the Claims

By the above,

1. claims 64 and 67 have each been rewritten for improved form and to make more clear the invention which Applicants regard as their invention,
2. claim 75 has been rewritten to correct an informality kindly noted by the Examiner, and
3. claims 89-91 have been added to more fully and completely claim the disclosed subject matter.

More particularly, claims 64 and 67 have been rewritten to make clear the requirement that the compression resistant member(s) is/are encased and that such encasement is in part by an inner covering. Such rewritten claims are entirely consistent with the original application such as shown in FIG. 6 and described at page 18, line 20 through page 19, line 2, for example.

Newly added claim 89 requires the gasketing assembly be **directly** joined with the rear waist portion of the stretchable waist band to mechanically deploy the at least one gasket element upon tensioning of the stretchable waist band. Newly added claim 90 requires the gasketing assembly be **directly** joined about the longitudinal centerline with the portion of the stretchable waist band to deploy the at least one gasket element against the lower back of the wearer when the waist band is in the stretched condition and to form the containment volume. Newly added claim 91 similarly requires the gasket element to be **directly** joined with the stretchable waist band.

Such direct joining is supported by various of the drawings in the application and the related or corresponding descriptions, including, FIGS. 1 and 2, page 14, lines 1-8, and page 15, lines 6-8; FIG. 7, page 19, lines 3-21; and FIG. 8, page 21, lines 1-10, for example.

Objections to the Specification

The disclosure has been objected to because of certain alleged informalities.

First, the Action cites passages in the application as allegedly making “rigid” and “compression resistant” appear to set forth the same thing. However, the Application, at page 18, line 4, clearly refers to “a rigid or **otherwise effective** compression resistant member”. (Emphasis added.) Moreover, the Application, at page 18, line 18; and page 25, lines 3-4, clearly refers to “a rigid or **otherwise** compression resistant member”. (Emphasis added.)

Rigid is a commonly used adjective that means “not bending; stiff; inflexible”. Those skilled in the art readily recognize that not all compression resistant members are rigid.

The significance of such distinction is further highlighted by the discussion of the rejections of claims 63, 66, 77 and 86-88, appearing in the Action at the bottom of page 5 whereat the Action states that “all materials resist compression to some degree.” The Action then asserts “there is sufficient factual evidence to conclude that the structure of Schaar, i.e., the folds, the number of layers, the thickness of the layers making up the thrust portions would inherently oppose or slow pressing together as best understood.” Assuming temporarily and solely for the sake of argument “that the structure of Schaar,

i.e., the folds, the number of layers, the thickness of the layers making up the thrust portions would inherently oppose or slow pressing together”, such structure does not satisfy the claim requirement of a rigid member, see claims 86-88. Clearly, not all “materials that resist compression to some degree” are “rigid”, as required by claims 86-88.

In view of the above, the withdrawal of the objection to the specification relative to the use of the terms “rigid” and “otherwise compression resistant member” is respectfully requested.

The specification was also objected to and the insertion of the phrase --in part-- requested relative to the encasement by or from the inner covering. By the above, the specification has been so rewritten. Thus such basis of objection is believed to have been overcome or otherwise satisfied and notification to that effect is solicited.

Claim Objections

The Action asserts that should claims 63 and 77 be found allowable, claims 86 and 87 will be objected to under 37 CFR 1.75 as being substantial duplicates thereof.

See the above discussion in the Objections to the Specification with regard to the terms “rigid” and “compression resistant”.

In view thereof, the Examiner is requested to reconsider the assertion the claims 86 and 87 would be objected to should claims 63 and 77 be found allowable.

The informality objections to claims 62-67, 75-79 and 87 have been addressed by rewriting claim 75 in the manner kindly suggested by the Examiner. Claims 62 and 65, however, have not been amended.

It is respectfully submitted that the teachings of the application are not necessarily limited to the specifically described and illustrated embodiments.

Moreover, Applicants should be given reasonable latitude in claiming their invention. The Office has provided no sound basis to assert that Applicants should not be allowed refer to “the gasketing assembly comprises”, in claim 62, or the “gasketing assembly”, in claim 65.

As previously submitted, the specification, such as at page 5, lines 13-16, for example, specifically states:

The gasketing assembly is operatively joined with the first portion of the rear waist section to mechanically deploy, upon tensioning of the stretchable material, a gasket element configured to inhibit a longitudinal flow of human discharge along a bodyfacing surface of the absorbent article.

and, such as page 22, lines 10-11, for example, specifically states:

The gasketing assembly 250 is generally composed of first and second leg members 252 and 254, respectively.

In view of the above, the objections to the claims are believed to have been overcome or are otherwise not presently applicable and notification to that effect is solicited.

Claim Rejections - 35 U.S.C. §112

Claims 63-67, 77 and 86-88 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Action alleges that it is unclear whether a “rigid” member and a “compression resistant” member are the same, i.e., if so, then claims 63 and 77 are the same as claims 86 and 87 and, if not, it is unclear what is the difference.

Such rejections are respectfully traversed.

“Rigid” and “compression resistant”, at least in the context of the subject patent application, clearly do not mean the exact same thing. Reference is again made to the above discussion relative to the Objections to the Specification with regard to the terms “rigid” and “compression resistant”. As noted above, the specification refers to a “rigid or otherwise effective compression resistant member”. That “rigid” and “compression resistant” do not mean the same thing is evident by the application specification recital of the modifier “effective” prior to “compression resistant” and the accompanying description of effectiveness to mechanically convert perimeter tension to effect deployment. For example, at page 18, lines 3-11, the Application states:

In the gasketing assembly element 126, at least the leg portions 132 include a **rigid or otherwise effective compression resistant member** 136 such as

composed of a plastic sheet material such as polyurethane, polyethylene or the like or a stiff paper product such as cardboard or the like. Thus, upon tensioning of the stretchable band 124, such leg portions 132 are effective to mechanically convert such perimeter tension to deploy the face portion 134 towards, preferably adjacent, the body of the wearer and such as may form or create a volume, designated by the reference numeral 138, effective to contain or hold body exudates therewithin and spaced apart from contact with the body of the wearer. (Emphasis added.)

In view of the above, claims 63-67, 77 and 86-88 are believed to be properly definite and notification to that effect is solicited.

Claim Rejections - 35 U.S.C. §102(b)

Claims 60-88 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 3,987,794 to Schaar (hereinafter "Schaar").

Independent claim 60 is directed to an absorbent article and requires the absorbent article include "a gasketing assembly operatively joined with a rear waist portion of the stretchable waist band to mechanically deploy at least one gasket element upon tensioning of the stretchable waist band, the gasket element configured to inhibit a longitudinal flow of human discharge along a body faceable surface of the absorbent article". Thus, claim 60 requires mechanical deployment of the at least one gasket element upon tensioning of the stretchable waist band. Claims 61-74 and 86 are dependent, directly or indirectly, on claim 60.

Independent claim 75 is directed to a disposable absorbent article and requires the disposable article include "a gasketing assembly operatively joined about the longitudinal centerline with a portion of the stretchable waist band to deploy at least one gasket element against the lower back of the wearer when the waist band is in a stretched condition and to form a containment volume, the deployed gasket element being effective to inhibit flow of matter between the waist of the wearer and the waist band of the absorbent". Thus, claim 75 requires deployment of the at least one gasket element against the lower back of the wearer when the waist band is in a stretched condition. Claims 76-79 and 87 are dependent, directly or indirectly, on claim 75.

Independent claim 80 is directed to a method of using an absorbent article adapted to fit about a waist of a wearer and requires “tensioning the stretchable waist band to deploy at least one gasket element to inhibit a longitudinal flow of human discharge along a body faceable surface of the absorbent article”. Thus, claim 80 requires that “tensioning the stretchable waist band” deploys the at least one gasket element to inhibit a longitudinal flow of human discharge along a body faceable surface of the absorbent article. Claims 81-85 and 88 are dependent, directly or indirectly, on claim 80.

In contrast to the claimed invention wherein tensioning/stretching of the waist band results in mechanical deployment of the at least one gasket element to inhibit a longitudinal flow of human discharge along a body faceable surface of the absorbent article (see claim 60); deployment of at least one gasket element against the lower back of the wearer to inhibit flow of matter between the waist of the wearer and the waist band of the absorbent (see claim 75); and deployment of at least one gasket element to inhibit a longitudinal flow of human discharge along a body faceable surface of the absorbent article (see claim 80), Schaar discloses that the captured elastic loop 55 thereof is:

expanded and actuated responsive to lateral expansion of the pleat means, and causes a gathering of the pad assembly in the waistline portion 33a. Thus, the elastic loop laterally constrains the waistline portion of the pad assembly, and when the diaper is placed on an infant after securement by the tape fasteners the waistline portion is brought into close contact by the elastic loop to obtain a snug fit about the waistline of the infant. (See Schaar, column 5, lines 28-37.)

Thus, Schaar specifically discloses that the captured elastic loop thereof is expanded and actuated responsive to lateral expansion of the pleat means and causes a gathering of the pad assembly in the waistline portion. This is in sharp contrast to the claimed invention wherein tensioning/stretching of the waist band results in deployment of the gasket element.

In view of the above, independent claims 60, 75 and 80, respectively, as well as the claims dependent thereon are believed to be patentable over the prior art of record and notification to that effect is solicited.

In addition, at least certain of the claims dependent on claims 60, 75 or 80 include additional limitations which are believed to render these claims further patentable over the prior art of record.

For example, claim 64 requires that the compression resistant member be an encased part of the gasketing assembly with the compression resistant member in part encased by an inner covering. Claim 67 requires that the compression resistant member of each of the pair of opposed thrust portions be encased and wherein the compression resistant member of each of the pair of opposed thrust portions is in part encased by an inner covering. While the Action refers to Schaar as disclosing "at least partially enclosing, the thrust portion", the inclusion and use of encased compression resistant members, as claimed, is clearly not shown or suggested by Schaar.

Claim 65 requires the gasketing assembly comprise at least a pair of opposed thrust portions effective upon tensioning of the stretchable waist band to deploy the face portion toward the waist of the wearer. As discussed above, Schaar fails to show or suggest an assembly wherein tensioning of a stretchable waist band results in deployment of a face portion of a gasketing assembly toward the waist of the wearer, let alone such a gasketing assembly wherein at least a pair of opposed thrust portions are effective upon tensioning of the stretchable waist band to deploy the face portion toward the waist of the wearer, as required by claim 65.

Claim 72 requires that the claimed absorbent article additionally comprise "a bodyside liner deployable by action of the gasketing assembly toward the waist of the wearer". Claim 79 requires the claimed disposable absorbent article additionally comprise "a bodyside liner deployable by action of the gasketing assembly toward the waist of the wearer". Claim 84 requires that, in the claimed method, the absorbent article also includes a bodyside liner wherein deployment of the gasket element directs the bodyside liner toward the waist of the wearer.

It is respectfully submitted that even if, solely for the sake of argument, the cover or top sheet 32 in Schaar is taken as corresponding to a bodyside liner, Schaar fails to show or suggest an arrangement wherein such cover/top sheet is deployable by action of the gasketing assembly toward the waist of the wearer, as required in the claimed

invention. In view thereof, claims 72, 79 and 84 are each believed to be further patentable over the prior art of record.

Claim 74 requires that, in the absorbent article, the “at least one gasket element is formed at least in part by a bodyside liner and the gasketing assembly comprises a pair of leg members, each leg member having **first and second terminal ends** with the **first terminal end** of each leg member connected to a face of the bodyside liner and the **second terminal end** of each leg member connected to the stretchable waist band.” (Emphasis added.)

It is respectfully submitted that a gasketing assembly inclusion of a pair of leg members with each leg member having first and second terminal ends, with the first terminal end of each leg member connected to a face of the bodyside liner and the second terminal end of each leg member connected to the stretchable waist band, as claimed, is not shown or suggested by the prior art. In particular, claim 74 requires each of the pair of leg members have first and second **terminal ends**. While the Action states the dictionary definition of “terminal”, the Action has apparently failed to appreciate, that in claim 74, terminal is used as an adjective for the word “end”. The American Heritage Dictionary defines “end” as “Either extremity of something that has length”. Clearly, “the boundary defined by the fold 44b or 44a”, “the fold 44a or the lateral edge of panel A”, “the boundary defined by the fold 44c or 44d” and the “fold 44d or the edge of panel E” **DO NOT** correspond to the claimed **terminal ends**.

In view thereof, claim 74 is believed to be further patentable over the prior art of record.

Newly Added Claims

By the above, claims 89-91 have been added to more fully and completely claim the disclosed subject matter.

Newly added claims 89 and 90 require the **direct** joining of the gasketing assembly with the stretchable waist band. Newly added claim 91 similarly requires the gasket element be **directly** joined with the stretchable waist band.

Such direct joining with a stretchable waist band is neither shown nor suggested by Schaar. Moreover, such direct joining is contrary to the express teachings of

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Schaar. For example, at column 5, lines 28-37, Schaar discloses that expansion of the elastic loop causes a gathering of the pad assembly in the waistline portion. The direct joining of a gasketing assembly or a gasket element, respectively, with a stretchable waist band, as in the claimed invention, would hinder and prevent such gathering of the pad assembly in the waistline portion.

In view thereof, claims 89-91 are believed to be further patentable over the prior art of record and notification to that effect is solicited.

Conclusion

It is believed that all pending claims are in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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